

c.) Remarks

Claims 1-5, 8, 12, 46 and 48 have been amended in order to recite the present invention with the specificity required by statute. Claims 13-28, 30-41, 43-45 and 49-66 are cancelled in order to reduce the issues and expedite prosecution. For the Examiner's convenience, the subject matter of the amendment is found, in the specification as filed, from page 7, line 19 to page 8, line 7 and page 8, line 14. Accordingly, no new matter has been added.

The Examiner states that benefit of the priority filing dates is not granted because applicant has not filed a certified copy of the Japan 10/241248 application as required by 35 U.S.C. 119(b). However, as shown in the attached From PCT/IB/304, the certified copy of Japan 10/241248 was forwarded to International Bureau under PCT Rule 17.1. Therefore, benefit of the priority filing dates should be granted under MPEP §189.03(c).

The Examiner states that the information disclosure statement (IDS) filed 10 May 2001 and 9 April 2002 fail to comply with the provision of 37 CFR 1.97, 1.98 and MPEP § 609 because (i) reference 10 does not disclose a publication date, (ii) references 1-4 list Accession Number without identifying their appropriate databases and (iii) reference 5-9 are duplicates of reference cited on IDS submitted 10 May 2001.

In regard to the IDS filed 10 May 2001, Applicants confirm that reference 10 was published in 1990. In regard to the IDS filed 9 April 2002, Accession Number of references 1-4 are based on the database for amino acid sequences in National Center for Biotechnology Information (NCBI). A corrected Form PTO 1449 is enclosed.

The specification is objected to for having two sections labeled “(3)” in pages 36 and 39. In response, Applicants wish to clarify that at page 36 is found (3) of section {2}, and at page 39 is found section {3}, not (3). Accordingly, the paragraphs are correct.

Claims 1-12, 42 and 46-48 are objected to as encompassing non-elected invention. Claims 1-4 and 46 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Such objection and rejection are believed to be addressed by foregoing amendments.

Claims 1-12, 29, 42 and 46-48 are rejected under 35 U.S.C. § 101 and §112, first paragraph, because the claimed invention is not supported by either a credible, substantial or specific asserted utility or a well established utility. In support of the rejection, the Examiner states that the asserted biological activity of SEQ ID NO:1 is based solely on its similarity to known hENT. This rejection is respectfully traversed.

Applicants wish to clarify that the function of SEQ ID NO:1 is not simply based on structural similarity to known hENT, but instead additionally founded on each of:

- i) comparing its hydrophobic plots to known nucleoside transporters (see Fig. 4),
- ii) high homology in the transmembrane regions which are important for substrate specificity and transport activity of nucleoside transporters (see Fig. 3), and
- (iii) 11-transmembrane structure which is commonly characterized in equilibrative nucleoside transporters.

That is to say, the function of the claimed polypeptide is designated in the specification as nucleoside transporter based on four independent structural characteristics of known nucleoside transporters.

In any event, Applicants respectfully wish to invite the Examiner's attention to Baldwin et al. (*J. Biol. Chem.*, Vol. 280 (2005), 15880-887, which confirms that the polypeptide of SEQ ID NO:1 has nucleoside transporter activity. A copy of Baldwin is enclosed with the accompanying Information Disclosure Statement.

Claims 7, 11 and 48 are rejected under 35 U.S.C. §112, first paragraph, because the specification does not disclose a repeatable process to obtain the biological material, plasmid p46-1, and it is not apparent if the biological material is ready available to the public. In response, Applicants enclose a suitable Deposit Declaration.

Claims 2, 5-12, 29, 42 and 46-48 are rejected under 35 U.S.C. §112, first and second paragraphs, as indefinite and for failing to comply with the written description requirement. This rejection is believed to be addressed by foregoing amendment.

Claims 2, 5, 6, 8, 9, 42, 46 and 48 are rejected under 35 U.S.C. §102(b), as being anticipated by Griffs et al. In support of the rejection, the Examiner states that Griffs which teaches a human nucleoside transporter with 28.1% sequence identity to SEQ ID NO:1.

This rejection is too believed to be addressed by foregoing amendment.

In view of the above amendments and remarks, Applicants submit that all of the Examiner's concerns are now overcome and the claims are now in allowable condition. Accordingly, reconsideration and allowance of this application is earnestly solicited.

Claims 1-13, 29, 42 and 46-48 remain presented for continued prosecution.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

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